IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO.11532 OF 2007

Yasin Abdul Gani Mansoori ...Appellant
Vs.
B.M.C. & Anr. ...Respondents

WITH
APPEAL FROM ORDER (ST) NO.11535 OF 2007

Gulam Husan Abdul Majid Pawar ...Appellant
Vs.
B.M.C. & Anr. ...Respondents

WITH
APPEAL FROM ORDER (ST) NO.11537 OF 2007

Kishore K. Jadhwani ...Appellant
Vs.
B.M.C. & Anr. ...Respondents

WITH
APPEAL FROM ORDER (ST) NO.11540 OF 2007

Naresh S. Shah ...Appellant
Vs.
B.M.C. & Anr. ...Respondents

WITH
APPEAL FROM ORDER (ST) NO.11542 OF 2007

Ramavtar Yadav ...Appellant
Vs.
B.M.C. & Anr. ...Respondents

WITH
APPEAL FROM ORDER (ST) NO.11544 OF 2007

Balkrishna A. Shetty ...Appellant
Vs.
B.M.C. & Anr. ...Respondents

WITH
APPEAL FROM ORDER (ST) NO.11546 OF 2007

Harindersingh Patheja ...Appellant
Vs.
B.M.C. & Anr. ...Respondents

WITH
APPEAL FROM ORDER (ST) NO.11548 OF 2007

Ramvilas Nanku Singh ...Appellant
Vs.

B.M.C. & Anr. ...Respondents

WITH
APPEAL FROM ORDER (ST) NO.11550 OF 2007

Baldutt Nanku Singh ...Appellant
Vs.
B.M.C. & Anr. ...Respondents

Shri Santosh B. Wakwade i/by M/s.M.P.Vashi for the Appellant in all Appeals.
Shri R.T.Walawalkar with Ms Geeta Joglekar for B.M.C in all Appeals.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 14, 2007.

P.C.:

1. Heard learned counsel appearing for the parties. Since challenge in these Appeals From Order is to an order refusing to grant ad-interim relief, the Appeals are taken up for final hearing at the stage of admission.

2. In these Appeals, the Appellants are the original Plaintiffs. The challenge in these Appeals is to the order dated 10th May, 2007 passed by the learned Judge of the City Civil Court, Mumbai declining to grant ad-interim injunction restraining the Respondents from demolishing the offending structures. The challenge in the suits filed by the Appellants is to an action under section 351 of the Mumbai Municipal Corporation Act, 1888.

3. The submission of the Appellants is that merits of the case are not considered by the learned trial Judge while declining to grant ad-interim relief. The submission of Shri Walawalkar appearing for the

Respondents is that the earlier suits filed in respect of the same suit structures were unconditionally withdrawn without obtaining leave of the Court to file a fresh suit in the subject matter of the said earlier suits. He submitted that work of road widening is affected because of illegal structures of the Appellants.

4. Perusal of the impugned order shows that the learned trial Judge has not at all considered the merits of the case of the Appellants. The learned Judge has observed that the Respondents have considered all the documents filed by the Appellants. The learned Judge has noted submissions made by the Advocate for the Respondents that suit structures are illegally constructed and the work of road widening is in progress. However, no reasons have been recorded by the learned Judge for coming to the conclusion that no prima facie case is made out by the Appellants.

5. The prayer for ad-interim relief could not have been disposed of in such a manner by the learned trial Judge. It is stated that the suit structures are coming in the way of road widening. Therefore, no purpose will be served by directing the trial Court to hear the prayer for ad-interim relief afresh. It will be in the interests of both the parties if the notices of motion are itself directed to be disposed of within a time

bound programme. This Court has already protected the suit structures by passing ad-interim order on 18th May, 2007. The said order will have to be continued till the disposal of the notices of motion.

6. Hence, I pass the following order:

(i) The trial Court is directed to finally decide the pending notices of motion for injunction taken out by the Appellants as expeditiously as possible and in any event within a period of six weeks from today.

(ii) Reply, if any, to be filed by the Respondents within a period of two weeks from today. Rejoinder, if any, shall be filed within one week from the date of filing reply.

(iii) Ad-interim order passed by this Court on 18th May, 2007 will continue to operate till the disposal of the notices of motion.

(iv) It is made clear that the trial Court will decide the pending notices of motion without being influenced by the grant of ad-interim relief by this Court and all contentions of the parties on merits are expressly kept open.

(v) Appeals are disposed of in above terms.

(vi) Parties and concerned Courts to act upon an authenticated copy of this order.

JUDGE